

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Establishing Just and Reasonable Rates)	WC Docket No. 07-135
For Local Exchange Carriers)	
)	

**REPLY COMMENTS OF BROADVIEW NETWORKS,
NUVOX COMMUNICATIONS AND XO COMMUNICATIONS, LLC**

Broadview Networks (“Broadview”), NuVox Communications (“NuVox”) and XO Communications, LLC (“XO”),¹ through their undersigned counsel, hereby respectfully submit their reply comments to the Federal Communications Commission (“Commission”) in response to the Notice of Proposed Rulemaking issued in the above-captioned proceeding.²

In their initial comments, the Joint CLEC Commenters explained that increased use of competitive local exchange carrier (“CLEC”) facilities for the termination of interexchange traffic was a public good – an indicator of competition in the telecommunications marketplace and evidence of significant end user benefits.³ Subscribers increase the use of their

¹ On December 17, 2007, Broadview, NuVox and XO submitted initial comments together with All American Telephone Co. Inc.; Adventure Communications; Great Lakes Communications; and Navigator Telecommunications, LLC (collectively the “Joint CLEC Commenters”). The instant Reply Comments are being submitted on behalf of only Broadview, NuVox and XO.

² *In the Matter Establishing Just and Reasonable Rates For Local Exchange Carriers*, Notice of Proposed Rulemaking, WC Docket No. 07-135, FCC 07-176. (rel. October 2, 2007) (“*NPRM*”).

³ Comments of All American Telephone Co. Inc.; Adventure Communications; Broadview Networks; Great Lakes Communications; Navigator Telecommunications, LLC; Nuvox Communications; OmniTel Communications; and XO Communications, LLC, CC Docket No. 07-135 at 5-6 (filed December 16, 2007) (“Initial Joint CLEC Comments”).

interexchange services because they perceive and receive an advantage to that usage, interexchange carriers gain additional revenues through increased traffic, and underlying carriers providing exchange access services earn additional revenues based on the increased minutes of use terminated on their facilities. Many commenters confirmed similar and complementary benefits that directly or indirectly attend increased usage of exchange access facilities.⁴

Numerous parties joined Broadview, NuVox and XO in arguing that CLECs should not be punished for such traffic increases by being burdened with a new regulatory framework.⁵ Broadview, NuVox and XO noted along with others that there is no need for the Commission to revisit the propriety of “revenue sharing” arrangements between CLECs and end users as the Commission, on several previous occasions, has declined to find these arrangements unlawful.⁶ Finally, the initial comments urged the FCC to refrain from adopting new regulations which would unnecessarily burden CLECs and to rely on its time-tested formal complaint process, a position echoed by a significant number of commenters.⁷

⁴ E.g., Comments TC3 Telecom at 2 (filed Oct. 18, 2007) (the stimulated traffic is real traffic from end users utilizing an innovative service, not fabricated or redirected traffic); Comments of Chase Com *et al.* at 10 (filed Dec. 17, 2007) (enhances freedom of electronic association); Comments of Hypercube/McLeodUSA at 16 (filed Dec. 17, 2007) (increased traffic typically reflects “desirable competitive initiatives and investment”); Comments of Global Conference Partners at 2 (filed Dec. 17, 2007) (conference calling services generate a plethora of benefits for consumers and carriers); *id.* at 9 (traffic volumes indicative of the public needs being served).

⁵ E.g., Comments of the Rural Independent Competitive Alliance at 3, 8 (filed Dec. 17, 2007) (new regulation, if any, should not be punitive; rather the Commission should rely on complaint procedures); Comments of Cbeyond, Inc. and Integra Telecom, Inc., at 8 (filed Dec. 17, 2007) (the proposed restrictions will stifle competition and can hardly be in the public interest); Comments of USTA at 3 (filed Dec. 17, 2007) (referring to possibility of forbearance from Section 204(a)(3) deemed lawful provision, argues that forbearance authority should not be used “to punish”).

⁶ *Accord* Comments of Futurephone.com, LLC at 6 (filed Dec. 17, 2007); Comments of the Rural Independent Competitive Alliance at 4-5 (Commission has found revenue sharing is not *per se* unlawful, but Alliance takes no position on specific arrangements at issue).

⁷ *Initial Joint CLEC Comments* at 12. See, e.g., Comments of CenturyTel, Inc., at 4-6 (filed Dec. 17, 2007); Comments of Alexicon Telecommunications Consulting at 6 (filed Dec. 17, 2007); Comments of Trans National Communications International, Inc. at 6-7

The parties calling for Commission action in this proceeding *as it pertains to CLECs* are principally a handful of the largest telecommunications companies in the nation, representing the largest shares of the interstate interexchange and local markets. Reviewing their comments, and without comment on their merits, it is clear to Broadview, NuVox, and XO that these carriers' alleged concerns are focused on a small number of rural CLECs.⁸ As a result, there does not appear to be any substantial support in the record, from any corner, for Commission action regarding traffic stimulation activities with respect to CLECs as a whole. From the perspective of Broadview, NuVox, and XO, this concerted attention on a small number of carriers regardless of whether it is merited underscores the propriety of maintaining the current regulatory framework regarding CLEC access charges and relying on the Commission's existing complaint procedures – rather than implementing backward-looking *re-regulatory* mechanisms through generic rules. In any event, apart from reiterating by reference the position set forth in the Joint CLEC Commenters' Comments and as summarized above, Broadview, NuVox and XO make no comments in reply to issues raised and allegations made in the comments of AT&T, Qwest and other IXC's targeting this subset of a subset (*i.e.*, rural) of CLECs.

Several commenters observe that the Commission has pending a more comprehensive intercarrier compensation docket (CC Docket No. 01-92), and they urge the Commission to devote its resources to address the generally applicable issues raised in that

(filed Dec. 17, 2007); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 8 (filed Dec. 17, 2007).

⁸ See, e.g., Comments of AT&T Inc. at 3 (filed Dec. 17, 2007); Comments of Verizon in Response to Notice of Proposed Rulemaking at 23-28 (filed Dec. 17, 2007); Comments of Qwest Communications International, Inc. at 3-7 (filed Dec. 17, 2007).

proceeding rather than the more limited concerns described in the *NPRM*.⁹ Many of these commenters more specifically advocate development of a solution to “phantom traffic” issues and clarification of the regulatory status of voice over Internet protocol (“VoIP”) traffic.¹⁰

Broadview, NuVox and XO were active participants in the intercarrier compensation docket and filed comments and reply comments on the so-called Missoula Plan¹¹ in general,¹² and in response to the Commission’s “phantom traffic” in particular, and do not believe comprehensive intercarrier compensation reform is necessary. However, as urged in their numerous comments, Broadview, NuVox and XO do believe the FCC should, in the context of pending dockets, resolve the “phantom traffic” issues and remove uncertainty regarding the regulatory treatment of VoIP traffic that has arisen because a number of parties, especially the major ILECs, have sought to impose access charges on such traffic even though the Commission has never found such net-protocol conversion services to be telecommunications services.

⁹ See e.g., Comments of Chase Com, *et al.* at 5-8 (recommending the Commission address switched access service issues as part of the comprehensive intercarrier compensation reform proceeding”); Comments of Cbeyond *et al.* at 9-10 (suggesting the Commission “focus its efforts on completing the broader pending intercarrier compensation rulemaking proceeding”); Comments of Cavalier Telephone, LLC at 2-3 (filed Dec. 17, 2007) (stating that the Commission should address “traffic pumping issues, along with other access charge reform matters, in a broader intercarrier compensation overhaul”); Comments of Adventure Communication Technology, L.L.C. at 5 (filed Dec. 17, 2007) (“the Commission should move to enact comprehensive access charge reform rather than enact piecemeal regulation”).

¹⁰ E.g., Comments of Texas Statewide Telephone Cooperative at 7 (filed Dec. 17, 2007) (Commission should focus resources on issues surrounding phantom traffic and the regulatory treatment of VoIP); Comments of the Western Telecommunications Alliance at 19-23 (filed Dec. 17, 2007); Comments of the Independent Telephone & Telecommunications Alliance at 15-16 (filed Dec. 17, 2007) (Commission should address phantom traffic and status of VoIP traffic “as soon as practicable”).

¹¹ See *Public Notice, Comment Sought on Missoula Intercarrier Compensation Reform Plan*, DA 06-1510 (July 25, 2006).

¹² Comments of Broadview Networks, NuVox Communications, One Communications Corporation and XO Communications, LLC on the Missoula Plan, CC Docket No. 01-92 (filed Oct. 25, 2006); Reply Comments of Broadview Networks, NuVox Communications, One Communications Corporation and XO Communications, LLC on the Missoula Plan, CC Docket No. 01-92 (filed Feb. 1, 2007) (“Joint CLEC 01-92 Reply”).

As noted in their comments and reply comments on the “phantom traffic” proposal on which the Commission sought comment in the Missoula Plan docket, Broadview, NuVox and XO identified several serious deficiencies in the Missoula Plan’s proposed treatment of phantom traffic and urged the Commission to reject the plan.¹³ Broadview, NuVox and XO submit that the Commission should resolve issues in CC Docket 01-92 related to phantom traffic by clarifying the technical call signaling rules so that the “phantom traffic” issue can be minimized, if not eliminated.¹⁴ To resolve any lingering “phantom traffic” concerns, the Commission should require carriers to enter into negotiations, upon request and subject to section 251(b)(5) (or 251(c)(2) where an ILEC is involved), to establish agreements governing the treatment of “phantom traffic.” State public service commission arbitration should be available to carriers in the event negotiations fail.¹⁵ To the extent the Commission decides to adopt a call data record (“CDR”) requirement as part of any “phantom traffic” solution, which Broadview, NuVox and XO submit is not necessary, terminating carriers should not be required to accept or pay for CDRs unless they request the CDRs and any rates for such records should be cost-based.

Broadview, NuVox and XO have also previously addressed the appropriate treatment of VoIP traffic, noting that such traffic is presently subject to the enhanced services access charge exemption and any attempts to change this treatment, whether pursuant to the

¹³ See generally Comments of Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications, LLC on the “Phantom Traffic” Proposal of the Missoula Plan Supporters CC Docket No. 01-92 (filed Dec. 7, 2006); *Joint CLEC 01-92 Reply*.

¹⁴ See Reply Comments of Broadview Networks, NuVox Communications, One Communications Corporation and XO Communications, LLC on the “Phantom Traffic” Proposal of the Missoula Plan Supporters, CC Docket No. 01-92, at 10-14 (filed Jan. 5, 2007) (“the Commission should reiterate and strengthen its call signaling rules - particularly as they apply to CPN and ANI”).

¹⁵ *Id.* at 15.

Missoula Plan or otherwise, would constitute a new rule¹⁶ and thus would be subject to notice and comment requirements. Some of the largest local exchange carriers have tried to generate uncertainty regarding the proper treatment of VoIP traffic by attempting to impose access charges on that traffic. However, as detailed in comments submitted earlier by NuVox and XO, in conjunction with others on the pending petition for declaratory ruling filed by Grande Communications, the Commission has consistently ruled that traffic which undergoes a net protocol conversion is enhanced services traffic and consequently is not subject to access charges pursuant to the enhanced services exemption.¹⁷ Importantly, this exemption applies to VoIP traffic regardless of whether it is originating or terminating.¹⁸ Consequently, unless and until the Commission determines prospectively that access charges are applicable to some or all VoIP traffic, any attempts to impose access charges on this traffic are premature. The most important step the Commission can and should take now in regard to VoIP traffic is to confirm the current, and historical, treatment of VoIP traffic as not subject to access charges. Broadview, NuVox and XO urge that any Commission determination changing this treatment of VoIP traffic be undertaken in the pending *IP-Enabled Services Proceeding* (WC Docket No. 04-36) and apply on a *prospective* basis only.

¹⁶ See e.g., Reply Comments of Joint CLEC Commenters (NuVox, XO and Xspedius Communications, Inc.), DA 05-2680, WC Docket No. 05-283 at 4-6 (filed Jan. 11, 2006) (“Joint Comments on Grande Petition”). Broadview concurs in the position taken by the NuVox, XO and Xspedius in these comments.

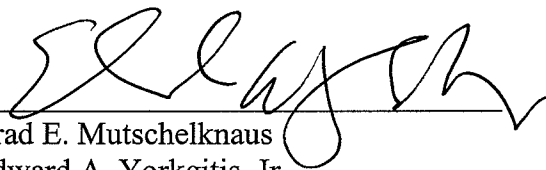
¹⁷ *Id.* at 4-6.

¹⁸ See e.g., *id.* at 4-10. See also *Access Charge Reform*, 12 FCC Rcd 15982, 16131-16135 (1997), *aff’d* *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *Access Charge Reform*, at 16131-16132, *citing MTS and WATS Market Structure*, 97 FCC 2d 682, 711-722 (1983) and *Amendment of Part 69 of the Commission’s Rules relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988).

CONCLUSION

For the foregoing reasons, the Commission should not adopt generic regulations applicable to CLECs governing so-called traffic stimulation activities but instead should encourage carriers to rely on the Commission's complaint procedures if they perceive that another carrier is charging unjust, unreasonable, or discriminatory rates or otherwise involved an unjust, unreasonable, or discriminatory practice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Mutschelknaus', written over a horizontal line.

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